

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

205

CWP No.7064 of 2011 (O & M)
Date of Decision :8.2.2024

Pooja and others *Petitioners*

versus

State of Haryana and others *Respondents*

CWP No.13271 of 2011

2024:PHHC:018224

Sushil Kumar *Petitioner*

versus

State of Haryana and others *Respondents*

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. R.K. Arora, Advocate (in CWP No.7064 of 2011)
Mr. R.K. Chaudhary, Advocate, for
Mr. Pankaj Dahiya, Advocate (in CWP No.13271 of 2011)
for the petitioners

Ms. Tanushree Gupta, DAG, Haryana

Ms. Alka Chatrath, Advocate and
Ms. Neha Singh, Advocate
for respondents no.5, 7, 8, 10, 12, 20 to 23, 25 and 28

Mr. Gautam Kaile, Advocate, for
Mr. Rajiv Sharma, Advocate, for respondent no.6

Mr. Rakesh Nagpal, Advocate, for respondent no.9

Mr. Satish Garg, Advocate, for
Mr. I.P. Goyat, Advocate, for respondent no.11

Mr. Jitender Nara, Advocate, for respondents no.14 & 24

Mr. Salil Bali, Advocate, for respondent no. 19
(in CWP No.7064 of 2011)

TRIBHUVAN DAHIYA J. (ORAL):

Since a common issue arises for adjudication in both these
petitions, the same are being decided together. Facts are, however, taken

from the petition, CWP No.7064 of 2011, which has been filed, *inter alia*, seeking a writ of *certiorari* quashing the selection and appointment of respondents no.5 to 28 to the post of Mathematics as well as Science Masters under advertisement no.4 of 2009, dated 13.8.2009, Annexure P-1. Further, a writ of *mandamus* has been sought directing the respondents to appoint the petitioners to the post of Masters (Mathematics and Science).

2. Facts of the case in brief are, the respondents issued advertisement no.4 of 2009 for one thousand thirty seven posts of Mathematics Masters, and one thousand two hundred and seventy six posts of Science Masters. Out of these, two hundred sixty nine posts of Mathematics Masters and three hundred thirty three posts of Science Masters were advertised under general category. Last date for submission of the applications was 14.9.2009. The petitioners submitted their applications along with requisite certificates of academic qualifications as well as experience. Interviews were held from 25 to 29 May, 2010; the petitioners appeared before the Selection Committee with all the required original certificates. The final result was declared on 6.1.2011, but they were not selected despite being highly qualified and experienced. Thereupon, after seeking information under the Right to Information Act, 2005, regarding the selection in question, the instant petition was filed.

2.1. Learned counsel for the petitioners, Mr. R.K Arora, contends that during pendency of the petitions, out of five petitioners, petitioners no.1 to 3 have joined government service, however, petitioners no.4 and 5 are still without job and their claim for appointment needs to be considered. Both of them applied for the post of Mathematics Masters,

and remained unsuccessful. Therefore, learned counsel has restricted the arguments to challenge the selection and appointment of private respondents no.7 to 11, who were appointed Mathematics Masters for extraneous consideration despite not fulfilling the requisite qualifications and being over-aged. It is on the basis of their original record of selection, which was accessed during pendency of the petition under Court orders. Photocopies of the same have been placed on record. He fairly concedes that record pertaining to the selection of respondents no.7 and 11 has not been placed on record and no illegality in their selection, at this stage, can be pointed out.

2.2. Mr. Arora has specifically referred to the application form of respondent no.8, Annexure A-4, to contend that she has claimed her age to be forty years two months and twenty eight days on the date of applying for the post. Whereas, the maximum age to apply for a general category candidate was forty years. Secondly, it has been claimed that the 'residence certificate' submitted by respondent no.8, showing her to be a resident of Jagadhri, District Yamuna Nagar, is dated 6.5.2010, which is after the last date for submission of application forms, i.e., 14.9.2009. Thirdly, he has submitted that her experience certificate dated 26.8.2009, for working as Trained Graduate Teacher (TGT) Mathematics from 2.8.2004 to 26.8.2009, was counter-signed only on 18.5.2010. This is also after the closing date of submission of the applications. Therefore, her candidature was liable to be rejected being overage, and other requisite certificates of residence and experience could also not have been considered for being submitted after the closing date.

2.3. With regard to respondent no.9, it has been contended that he

was also over-aged on the closing date for submission of application forms, as he mentioned his age to be forty three years three months and five days as on 14.8.2009. Besides, in the form he did not claim to have passed Haryana Teacher Eligibility Test (HTET), and the certificate submitted by him later could not have been considered. On these counts, candidature of respondent no.9 was also liable to be rejected.

2.4. He has also challenged appointment of respondent no.10 on the ground of being over-aged. However, it is not disputed that the said respondent has already retired from service on 30.5.2021; his date of birth being 1.5.1963. It is further contended that in the event of appointment of respondents no. 8, 9 and 10 being set-aside, the petitioners have a right to be considered.

3. *Per contra*, learned counsel for respondents no.8 and 10, Ms. Alka Chatrath, contends that both were registered with the employment exchange under Registration Nos.W-5353/08 dated 23.10.2008, and 1571/88 dated 22.8.1988, respectively. Accordingly, they were entitled to age relaxation at the time of submitting applications for the post in question. It has been held by a Division Bench of this Court vide judgment dated 16.5.2000, passed in CWP No.17401 of 1999 titled *Rajkumari Sharma and others v. State of Haryana and others*, that the candidates, who were registered with the employment exchange at the time of applying for a post, will be entitled to age relaxation in terms of government instructions. Therefore, these respondents cannot be barred from consideration on account of being above forty years on the closing date. These facts or applicability of the instructions have not been denied by the petitioners, as no counter-affidavit to that effect has been filed. She

further contends that respondent no.8 has claimed to be resident of Haryana in the application form itself, as also that she gained teaching experience as TGT-Mathematics and PRT-Mathematics much prior to the closing date. It is also contended that respondent no.10 has retired from service in May 2021.

4. Mr. Rakesh Nagpal, learned counsel for respondent no.9 contends that he is an ex-serviceman, and the provision for age relaxation for the category was notified in the advertisement itself. It requires that 'Ex-serviceman candidates are entitled to age relaxation upto continuous military service added by three years'. Accordingly, he has been given benefit of three years age relaxation being ex-serviceman as per entitlement, and has duly submitted his ex-serviceman certificate to the authorities which is not in dispute. It is also undisputed that he passed HTET much prior to the closing date, though inadvertently it could not be mentioned in the application form. Therefore, there is no illegality committed in considering his candidature. He is due for retirement in June 2025.

5. Heard.

6. It is apparent on record that private respondents no.7 to 11, against whose appointment arguments have been advanced, were selected on 6.1.2011, and joined the post soon thereafter. They are on the verge of retirement, except respondent no.10, who has already retired in May 2021. Nonetheless, the arguments are being considered on merits. In the absence of record of selection pertaining to respondents no. 7 and 11, no illegality about it could be pointed out. So far as the selection of respondents no.8 and 10 is concerned, they were given age relaxation on account of being

registered with the employment exchange. Neither their registration, nor the State government instructions based upon which the relaxation was given, have been disputed. The only contention raised by learned counsel for the petitioners is that there was no stipulation in the advertisement providing for age relaxation to the persons/candidates registered with the employment exchange. That in itself cannot be a ground to set aside the selection since the employer's instructions giving the relaxation are not in dispute. Besides, respondent no.9 was given age relaxation being an ex-serviceman. The fact of his being ex-serviceman remains undisputed, as also that he was entitled to relaxation on that basis. Learned counsel has, however, contended that even after relaxation the said respondent would not have been eligible. Be that as it may, in case there has been an irregularity in giving age relaxation to the respondents at the time of selection, that cannot be gone into at this stage when they are on the verge of retirement.

7. So far as submission of the certificates of experience, residence and HTET/STET by respondents no.8 and 9 is concerned, there is no dispute that the same were genuine, and they had the requisite qualification as well as experience prior to the closing date for submission of application forms. It is also not in dispute that respondent no.8 had been a resident of the State prior to that date. All these documents were submitted for verification before the Selection Committee. Presenting the documents/certificates after the closing date to substantiate the claim made in the application form, is permissible in certain circumstances. In this background, failure to mention the fact of possessing the certificates in the application form, cannot in itself be a ground to set aside the

appointment at this stage when the respondents' service career in drawing to a close.

8. Further, it is not established on record that the petitioners were next in merit of the selected candidates; therefore, setting aside of selection and appointment of the private respondents will not entitle them to be considered for the post.

9. In view of the aforesaid reasons, this Court is not inclined to interfere in the matter. Accordingly, both the petitions stand dismissed.

10. Pending miscellaneous application(s), if any, stands disposed of accordingly.

11. Photocopy of this order be placed on the connected case files.

(TRIBHUVAN DAHIYA)
JUDGE

8.2.2024
Ashwani

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No